

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

Grain Belt Express Clean Line LLC)	
)	
Application for an Order granting Grain)	
Belt Express Clean Line LLC a Certificate)	
of Public Convenience and Necessity)	
pursuant to Section 8-406.1 of the Public)	
Utilities Act to Construct, Operate and)	Docket No. 15-0277
Maintain A High Voltage Electric Service)	
Transmission Line and To Conduct a)	
Transmission Public Utility Business in)	
Connection Therewith and Authorizing)	
Grain Belt Express Clean Line Pursuant to)	
Sections 8-503 and 8-406.1(i) of the Public)	
Utilities Act to Construct the High Voltage)	
Electric Transmission Line)	

**REPLY BRIEF OF
THE LANDOWNERS ALLIANCE OF CENTRAL ILLINOIS, NFP**

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**INITIAL BRIEF OF
THE LANDOWNERS ALLIANCE OF CENTRAL ILLINOIS, NFP**

I. Introduction

A. Overview and Summary of Position of Landowners Alliance of Central Illinois, NFP ("LACI")

Nothing contained in any of the Initial Briefs filed in the proceeding alters LACI's position taken in its Initial Brief: First, the Illinois Commerce Commission ("Commission") lacks jurisdiction and authority to grant the relief requested in this proceeding. Second, even assuming jurisdiction does lie with the Commission to consider the Application in the manner filed, Grain Belt Express Clean Line LLC ("GBX") has not met its burden of satisfying the applicable statutory requirements; and as a result, the Commission should not grant a Certificate of Public Convenience and Necessity ("Certificate" or "CPCN") to GBX.

B. Description of Grain Belt Express and the Project

C. Procedural History

The following activity has occurred in addition to the Procedural History described in LACI's Initial Brief. Initial Briefs were filed by Grain Belt Express Clean Line LLC ("GBX"), Concerned Citizens and Property Owners ("CCPO"), Landowners Alliance of Central Illinois, NFP ("LACI"), Illinois Agricultural Association ("Farm Bureau"), Mary Ellen Zotos ("Zotos"), Rex Encore Properties LLC and Rex Encore Farms, LLC (together, "Rex Encore"), Illinois Central Railroad Company ("IC Railroad"), Rockies Express Pipeline LLC ("REX Pipeline"), Brown Branch LLC and JAR Branch LLC (together, "Branch Properties Parties"), The Building Owners and Managers Association of Chicago ("BOMA/Chicago"), Environmental Law and Policy Center, Infinity Wind Power ("Infinity"), International Brotherhood of Electrical Workers Locals 51 and 702, AFL-CIO ("IBEW"), Wind on the Wires (WOW"), Citizens Utility Board, and BNSF Railway Company.

As described in the Procedural History section of LACI's Initial Brief, intervenors LACI, Farm Bureau, CCPO and Zotos filed a joint Motion for Leave to file Complaint for an Order of Prohibition with the Illinois Supreme Court on August 17, 2015. As of the date of this Reply Brief the Motion is still pending.

D. D. Legal Standards

- II. **Grain Belt Express' Compliance with Section 8-406.1 Pre-Filing Meeting and Notice, Application Content, and other Section 8-406.1 Requirements**
- III. **Grain Belt Express' Right to Utilize Section 8-406.1 as an Entity that is not a Public Utility**

LACI is a member of the group of Intervenors who have opposed GBX's unprecedented use of Public Utilities Act ("PUA") §8-406.1 in this proceeding. As one of

those opponents, LACI has to say, respectfully, that it remains frustrated over the absence of any explanation or reasoning supporting the decision supported only by three of the five Commissioners to reject requests to require GBX, a non-“public utility,” to use §8-406 instead. The frustration and disappointment was, and remains, all the more acute due to this decision having been made in the face, first, of the contrary position taken (provided with supporting argument) by the Commission’s trial staff, and, second, of the contrary recommendation (also provided with supportive reasoning) of the administrative law judge who had considered all the arguments by parties on both sides of the issue. Again, respectfully stated, LACI and its Intervenor allies deserved more on this key, threshold issue. Such a void of stated reasoning leads LACI to the only conclusion it can draw, that the decision was arbitrary.

In support of its ongoing evasion of the clear, express statutory “public utility” prerequisite, GBX argues in its Initial Brief that (a) the issue of the Commission’s lack of authority to permit GBX to pursue its Certificate under § 8-406.1 is not jurisdictional; and (b) that the finding in the *Rock Island*¹ proceeding on a somewhat similar, but different and legally distinguishable, question is controlling here. GBX is wrong on both counts. The cases it cites in support of its jurisdictional argument are inapplicable and not controlling here; and its attempt to portray the issue here as the same as the issue in *Rock Island*, upon inspection, must fail, as this docket is distinguishable from *Rock Island* and readily susceptible of a different outcome.

GBX cites *Sheffler v. Commonwealth Edison Co.*, 399 Ill.App.3d 51, 923 N.E.2d 1259 (1st Dist. 2010), and *Durica v. Commonwealth Edison Co.*, 2015 IL App (1st) 140076

¹ *Rock Island Clean Line LLC*, Docket 12-0560 (Nov. 25, 2014)

(2015) in support of its argument that that the focus of the jurisdictional inquiry should be on the nature of the relief sought rather than the basis for the relief. GBX IB, p. 28. Both cases presented the issue of whether claimants were seeking reparations or whether they were seeking damages. The Commission, as both courts held, has jurisdiction to hear and decide claims for reparations, as they are in the nature of rates. However, claims for damages are beyond the Commission's jurisdiction and must be presented to and decided by the circuit court. GBX launches its argument from these cases to contend that the Commission's jurisdiction is never subject to challenge when the dispute is over whether a party may or may not utilize a certain section of the PUA in making an application to the Commission. In effect, according to GBX, the ends justify the means. The *nature vs. basis* dichotomy of *Sheffler* and *Durica* is taken out of context in GBX's argument; and the reach of these two cases does not extend as far as GBX would suggest. Neither case means that the issue of whether the Application of GBX, as a non-"public utility" attempting to utilize §8-406.1, implicates the Commission's jurisdiction. Contrary to GBX's argument, the issue is correctly framed as whether the Commission has extended its jurisdiction beyond what the PUA, in §8-406.1, allows.

GBX next argues that, because of the inclusion of "public utility" in §8-406, and because the Commission found that Rock Island Clean Line LLC, also not a public utility at the time of its Application, was authorized to apply for its CPCN under that section, then the same outcome should occur here. GBX's argument must fail because it does not stand up to closer scrutiny. Section 8-406(a) (the 'transacting business' subsection) states in relevant part, "No public utility ... shall transact any business in this State until it shall have obtained a certificate...." Similarly, §8-406 (b) (the 'construction' subsection) states

in relevant part, “No public utility shall begin the construction ...unless and until it shall have obtained from the Commission a certificate....” The Commission affirmed in *Rock Island* the earlier denial of motions to dismiss because Rock Island Clean Line LLC was not a public utility at the time it filed its Application. It is significant as a matter of statutory construction that neither subsection (a) or (b) of §8-406 states that only a “public utility” may apply for a CPCN; rather, both subsections state only that no public utility may begin construction or may transact business without a CPCN. Section 8-406.1, by contrast, states at its beginning that, “A ‘public utility’ may apply for a certificate....” The language used in these two sections is different, and the difference is significant. The finding by the Commission in *Rock Island* does not dictate a similar result here. The legislature could hardly have been more clear in enacting §8-406.1 that it, and its expedited procedure and automatic §8-503 order features, are available only to entities that are “public utilities” at the time of the application.

The next impediment facing GBX is the lack of authority under §8-406.1 to transact business as a public utility. Nowhere in §8-406.1 does the applicant gain the right to conduct or transact business in this State as a public utility. This is in contrast to §8-406, which provides separately for a CPCN to construct² and a CPCN to transact business as a public utility³. Section 8-406.1 authorizes the grant of a Certificate to construct a transmission line, but nothing more; consequently, even if GBX is granted a Certificate to construct its proposed Project, it will be left without legal authority to operate it or

² “No public utility shall begin the construction of any new plant, property or facility ... unless and until it shall have obtained from the Commission a certificate that public convenience and necessity require such construction.” §8-406(b).

³ “No public utility ... shall transact any business in this State until it shall have obtained a certificate from the Commission that public convenience and necessity require the transaction of such business.” §8-406(a).

otherwise to transact business. In its Initial Brief, GBX argues that if the Commission grants its request for a Certificate to construct the Project, it will as a matter of law also be authorized to operate the transmission line as a public utility. Its argument is that once it receives a Certificate to construct, it will thereby become a “public utility under §3-105, which, in turn, imbues it with the right to operate as a public utility, including to operate the transmission line for which it will have a Certificate to construct. GBX IB, pp. 30-31. This is a bootstrap-type argument that is illogical and should not be accepted. GBX wants to draw parallels between §8-406.1 and §8-406 when it is to GBX’s advantage to do so, as in the previous paragraph of this Reply Brief. Because it would not be to its advantage, however, GBX wishes to ignore the parallels, or lack thereof, between these two statutory sections in the context of GBX’s right to transact business. Section 8-406.1 includes the right to apply for, and be granted, a Certificate “for the construction of any new high voltage electric service line....” By contrast, §8-406 includes one subsection (§8-406(b)) that permits an application (by a “public utility”) for, and the grant of, a Certificate for “the construction of any new plant, equipment, property or facility...” It also includes another subsection (§8-406(a)) that permits an application, and the grant of, a Certificate for the “transaction of such business.” GBX does not offer a reason why such a parallel “transact business” grant of authority should be implied under §8-406.1 when no such provision was included and when the “parallel” §8-406 expressly and separately provides for a “transact business” grant of authority.

IV. **Section 8-406.1(f) Criteria for a Certificate**

A. **Section 8-406.1(f) – Grain Belt Express’ Promotion of the Public Convenience and Necessity**

LACI recited the applicable legal standard in its Initial Brief. “Necessity” in the context of an application for a certificate of public convenience and necessity has been interpreted by the appellate court. In *King v. ICC*, 39 Ill. App. 3d 648, 653 (4th Dist. 1976), the court stated that necessity requires that the service be “needful and useful to the public.” The determination of necessity is within Commission’s discretion, and permits broad range of factors. *Commonwealth Edison Co. v. Ill. Commerce Comm’n*, 295 Ill. App. 3d 311, 317 (2nd Dist. 1998). Necessity is to be determined from a “consideration of all the circumstances.” *Wabash, Chester & Western R.R. Co. v. Illinois Commerce Comm’n*, 309 Ill. 412, 141 N.E. 212 (1923).

GBX’s Application in this proceeding is replete with promises of what it will do or what will happen. The extraordinary request GBX has made is unaccompanied by a description of anything GBX has done by way of constructing or operating any utility facilities, serving any customers, or transacting any public utility business, anywhere in Illinois or elsewhere. GBX’s parent, Clean Line Energy Partners LLC (“Clean Line”) has embarked on an unprecedented strategy and plan to develop five separate, major high voltage electric transmission line projects, four of which are non-traditional HVDC technology, in multiple states, consisting of over 3,000 miles of new transmission lines, and costing \$10 billion, all on a near-simultaneous basis. Skelly, Tr., pp. 237-238. Its small management team is responsible for successful completion of all five projects. This lack of experience in developing, constructing and operating such facilities severely undermines GBX’s credibility to do and make happen what it promises it will do and make happen. The Commission should not simply look to and apply the Order in *Rock Island*

here. Clean Line has suffered setbacks in its quest to obtain approvals and continue to pursue its projects.

One such setback is in Iowa pertaining to the Rock Island project. Under cross-examination, Clean Line CEO Mr. Skelly acknowledged the uncertainty as to the timing of and whether the Rock Island project will proceed at all due to the regulatory challenge in Iowa. Skelly, Tr. pp. 263-267, 281-285

Another setback is the Missouri PSC's denial of a certificate, and subsequent denial of rehearing, for the GBX Project in that state. *In the Matter of Grain Belt Express Clean Line LLC*, File No. EA-2014-0207 (Mo. Pub. Svc. Comm'n July 1, 2015), *reh'g denied*, *In the Matter of Grain Belt Express Clean Line LLC*, File No. EA-2014-0207 (Mo. Pub. Svc. Comm'n Aug. 12, 2015). The GBX cannot be built without the Missouri portion, and the Missouri portion cannot be built without regulatory approval to do so.

In addition, Clean Line continues to be thinly capitalized, routinely having to go back to its initial investors, and to new outside investors, for more development capital. See Berry, Tr., pp. 950-979.

Since the date of Order in Rock Island, therefore, Clean Line's condition and the likelihood of it achieving its objections have, if anything, become more precarious. Most of the landowners in this proceeding remain steadfastly opposed to the GBX Project.

The Commission should not apply the same standard here as it does in other cases in which a CPCN is being requested by an experienced public utility with a proven track record of successful completion of projects, successful operation of utility facilities and a utility business, and successful service to customers. As Staff states in its Initial Brief, what constitutes public convenience and necessity is within the Commission's discretion,

and permits a broad range of factors. Staff IB, p. 8, citing *Commonwealth Edison Co. v. Ill. Commerce Comm’n*, 295 Ill. App. 3d 311, 317 (2d Dist. 1998); *New Landing Util., Inc. v. Ill. Commerce Comm’n*, 58 Ill. App. 3d 868, 871 (2d Dist. 1977). Such “broad range of factors” should include the experience and status of the applicant. A higher standard should apply here given GBX’s status, and whether the Project “will promote the public convenience and necessity” should be judged with that status in mind. If new electric generation to which the Project would interconnect existed, but could benefit from additional interconnection capability, for example, then we might be better able to conclude that it promotes the public convenience and necessity. Or if the applicant had other utility assets and a substantial balance sheet showing financial strength, we might be better able to conclude that the Project promotes the public convenience and necessity. Or if MISO or PJM had made a determination of need for the Project, we might be better able to conclude that it promotes the public convenience and necessity. None of those factors, however, exist here. Consequently, whether the Project can be found to promote the public convenience and necessity should be judged by a higher standard.

B. Section 8-406.1(f)(1)

1. *Necessary to Provide Adequate, Reliable, Efficient Service*

GBX has not satisfied its burden to show that the Project is necessary for reliability. GBX’s evidence on this issue is unconvincing and fails to satisfy the statutory standard. There is no evidence that the Illinois electrical system is unreliability or in need of reliability upgrades or improvements. Neither the regional transmission organizations (“RTOs”) with responsibility for the Illinois transmission grid (MISO, PJM) nor the Staff here has found that to be the case. The Project, by itself, provides no reliability benefits. Only if additional

electric supply in the western Kansas Resource Area is built and operated does the Project serve any purpose or use. GBX's argument that the Project is necessary to reliably transport to-be-built wind generation in Kansas and is therefore necessary for reliability under the Illinois statute (GBX IB, pp. 42-44) is novel, but should be rejected.

2. Promote the Development of an Effectively Competitive Electricity Market

In its Initial Brief, Staff offers three categories of considerations that are relevant to whether the so-called "promote competition" requirement has been satisfied – whether the utility has shown that:

- (a) The Project contributes to increasing the degree of competition for electric energy, capacity availability, renewable energy credits, or other electricity market goods and service[s];
- (b) The benefits of the increased competition outweigh the costs of the Project; and
- (c) The Project will not prevent an even greater degree of competition being attained through an alternative project or some combination of alternative projects.

Staff IB, p. 14.

GBX offers several criticisms of Michael Proctor's testimony with respect to Dr. Proctor's levelized cost analysis. First, GBX challenges his capacity adder to the wind generation alternatives as an "unjustified cost adder to increase the LCOE of the wind generation options relative [to] the combined cycle gas generation option." GBX IB, p. 75. Dr. Proctor's testimony shows that, with the capacity adder, the non-dispatchable wind generation alternatives are competitive with the dispatchable combined cycle alternative, and the capacity adder for wind is necessary to make the alternatives appropriately comparable. LACI Ex. 5.0 Rev; LACI Ex. 5.1 Rev. GBX takes issue with Dr. Proctor's "unreasonably low" low inflation assumptions. GBX IB, p. 75. The inflation rates used by Dr. Proctor are the same rates used by the Economic Information Administration in its

forecasts. LACI Ex. 3.0 Rev, ll. 57-66. GBX next criticizes Dr. Proctor's comparison of capital costs for Illinois wind to Kansas wind. GBX IB, pp. 75-76. The referenced data from the DOE's Wind Technologies Market Report is for the Interior and the Great Lakes Regions. The Report does not compare Illinois to Kansas. Given the various factors that affect the installed capital costs for wind projects, Dr. Proctor's costs are reasonable. GBX challenges Dr. Proctor's assumption of increasing capital costs, at the rate of inflation, over the study period. GBX IB, p. 76. Whether or not nominal costs of construction for wind projects will increase over the next several years is relatively unimportant when performing a wind-on-wind comparison. Once the fossil fuel generation alternative is eliminated, Dr. Proctor's levelized cost analysis of a wind-on-wind comparison of Project/Kansas wind to Illinois wind is legitimate, reasonable and reliable. LACI Ex. 5.0 Rev, ll. 324-331; LACI Ex. 5.1 Rev. GBX also takes issue with Dr. Proctor's challenge to GBX's assumed 55% capacity factor for Kansas wind (Berry Reb., GBX Ex. 11.13, ll. 1098-1095), claiming, "With no citation of supporting data, Dr. Proctor reduced the capacity factor for new Kansas wind generators." GBX IB, p. 76. It is axiomatic that capacity factors must match wind technology and average wind speeds for the specified region. GBX witness David Berry admitted that his 55% capacity factor is based on improved turbine technology (Berry, Dir., GBX Ex. 11.0, ll. 1087-1090), which technology does not match the turbine technologies for his estimated wind generation construction costs (\$1,760/kW) for the Interior region. Mr. Berry correctly points out that Dr. Proctor's utilization of a 52% capacity factor for Kansas wind was based on requests for information from existing wind generation companies from two years ago, matching the same time period for which Dr. Proctor obtained his construction, or installed capacity, costs for wind

generation. LACI Ex. 3.0 Rev, ll. 92-99. Moreover, it is unreasonably aggressive to assume a significantly higher capacity factor without any examples of such factors having been actually achieved; and instead basing it solely on emerging technologies which the manufacturers expect will achieve such results.

GBX next challenged Dr. Proctor's 20% increase in projected capital costs for the Project, calling it arbitrary. GBX IB, p. 76. It is eminently reasonable, however, to build in and assume a greater capital cost than what GBX presented as its base case projection. First, SPP studies show substantial transmission project actual cost increases compared to projections. Secondly, this is an HVDC project, which is rare in the United States, thereby justifying such an increase. Third, neither GBX nor any of its sister project companies has ever developed and constructed (nor has Mr. Skelly or Mr. Berry) a major transmission line, even a more conventional AC line. Fourth, the same Clean Line personnel are charged with the responsibility to develop and construct five major transmission projects over the same, or nearly same, time frame. Therefore, adding 20% to the base case cost estimate, rather than including it only as a sensitivity, is reasonable and should be accepted. In its Initial Brief, GBX points to Mr. Berry's recalculation of the relative LCOE (levelized cost of energy) values of Project/Kansas wind, Illinois wind, and gas combined cycle alternatives, after having "corrected" Dr. Proctor's LCOE analysis. GBX IB, p. 77; Berry, Reb. GBX Ex. 11.13, p. 56, ll. 129-130. Interestingly, however, Mr. Berry retained Dr. Proctor's capacity adder for the two wind alternatives, even after criticizing it earlier.

GBX criticizes Dr. Proctor's introduction of a MISO wind alternative that he believes should be considered in the determination of whether the GBX Project passes the

“promote competition” test. GBX IB, pp. 77-78. GBX bases its criticism on the lack of specific detailed transmission data, and the additional transmission capacity, that would be necessary for this alternative. GBX seems to ignore, however, Dr. Proctor’s having accounted for certain transmission factors. As explained in Dr. Proctor’s rebuttal testimony, the transmission cost for the MISO wind generation alternative is included, reflected in costs that are required to achieve delivery to the market. Proctor, Reb., LACI Ex. 5.0 Rev, ll. 347-370; see also *Id.*, ll. 395-415 (discussing physical delivery vs. market delivery of electricity). In addition, as Dr. Proctor explained, the MISO MVPs require additional high voltage backbone transmission to deliver the proposed MISO wind to market, which is recognized and is a matter of timing. Proctor, Reb. LACI Ex. 5.0 Rev, ll. 544-553.

In further response to challenges to the inclusion of MISO wind as an alternative to the GBX Project, LACI points to Staff’s third factor under the “promote competition” standard: “The Project will not prevent an even greater degree of competition being attained through an alternative project or some combination of alternative projects.” Staff IB, p. 14; see also, *Illinois Power Co. v. Illinois Commerce Comm’n*, 111 Ill. 2d 505, 490 N.E. 2d 1255 (1986), discussed in LACI’s Initial Brief, LACI IB, pp. 32-33 (public convenience and necessity determination requires comparison of alternatives).

3. *Least Cost*

C. Proposed Conditions relating to Grant of the CPCN

1. *Financing Condition*

2. *Cost Allocation/Rate Recovery Condition*

D. Other Considerations Under Section 8-406.1

E. Proposed Conditions relating to Grant of the CPCN

Both CCPO and the Farm Bureau propose conditions that this Commission should impose if it grants GBX a CPCN. These conditions are eminently reasonable given the neophyte status of GBX and its lack of sufficient finances and relevant know how. Moreover, they are necessary to prevent dire consequences for the landowners.

CCPO argues that GBX should be required to provide evidence of sufficient funds to complete the project before acquiring easements. CCPO IB, p. 16. Given, GBX will submit to a financing condition prior to constructing, “demonstrate[ing] compliance . . . before starting construction of the Project on easement properties. GBX IB, p. 108. But GBX is assuming it already has easements in place. Presumably, it could have acquired those easements through condemnation. In sum, GBX has not committed to sufficient financing prior to clouding the title to properties of Illinoisans. LACI agrees that GBX should be ordered to demonstrate it has sufficient financing to construct the Project before acquiring easements. Moreover, as explained below, intervenors and landowners should be provided notice of submission to the Commission and have the opportunity to review and contest the sufficiency.

CCPO argues that GBX should restrict the easements to GBX alone, and provide for cancellation of easements by a time certain if no construction is occurring. *Id.* at pp. 16-17. Because GBX has spoken from both sides of its mouth on this issue, CCPO’s concern is justified. GBX states that only it will use the easement. GBX IB, p. 134 (“the Easement Agreement only grants Grain Belt Express the right to construct . . .”). Yet, on the same page of its Initial Brief, GBX argues it “has the rights to sell, assign, mortgage,

or lease its rights under the easement.” Which is it? CCPO’s condition is compelling, but does not go far enough. LACI would add that GBX should be required to show that it has the necessary funds set aside to pay competent counsel to draft and record documents voiding the easements and that those documents make it explicitly clear that only GBX can use this easement and only for this Project.

CCPO argues that GBX should provide security for decommissioning. *Id.* p. 17. LACI agrees; the need for decommissioning security is apparent. LACI IB, p. 55. It should be pointed out that the GBX financing condition does not assist with decommissioning. The GBX proposed financing condition is not sufficient to provide landowners with protection if the project is built but later decommissioned. The financing condition might get the Project built – if first-timer GBX does not have any budget overruns – but it does nothing for ongoing operations or decommissioning the line.

The Farm Bureau supports another easement related condition. During the hearings, Mr. Lawlor committed Grain Belt to honoring any pending easement agreement after it secures eminent domain authority. LACI agrees that this commitment should be memorialized and made enforceable in the Final Order. Farm Bureau IB p. 44. Similarly, Mr. Skelly committed GBX to only using easements for this Project. Likewise, the Commission should memorialize and make this commitment enforceable in the Final Order. *Id.*

Assuming, *arguendo*, that this Commission grants GBX the relief it seeks, these conditions, along with GBX’s financing condition, should be imposed. Moreover, intervenors and landowners should have the opportunity to review GBX’s submissions relating to the conditions. Intervenors should receive notice, be allowed to

appear/intervene, and to participate in proceedings concerning the sufficiency of the submissions. Anything short of this notice and opportunity to participate would be a denial of due process rights.

F. Other Considerations Under Section 8-406.1

On page 16 of its Initial Brief, the ELPC claims that the project creates environmental benefits. It expressly recognizes that the Commission considers environmental impacts when considering various routing options. ELPC IB, p. 16, *citing*, Final Order, p. 55, *In re Ill. Power Co.*, Docket No. 06-0706 (Ill. Commerce Comm'n Mar. 11, 2009). ELPC's point is without purpose. Here, excepting a few local modifications by intervenors, there is no discussion as to routing.

Having raised the issue, ELPC has failed to acknowledge the environmental impact of constructing the proposed line. It will result in the destruction of forested areas and impact protected wildlife such as bald eagles. See LACI IB, p. 52. Thus, this Commission must weight these environmental impacts against the purported benefits of a transmission line that is not restricted to wind-energy alone.

V. **Proposed Route of the Project in Illinois and Land Acquisition**

A. Description and Development of the Proposed Route

B. Selection of Proposed Route vs. Alternate Route

C. Proposed Revisions to the Proposed Route (Rex Encore and Branch Properties Parties)

D. Proposed Design Aspects of the Project

1. *Easement Widths*

2. *Structure Types and Other Design Parameters*

Staff argues that GBX's will use monopole structures except for when it is necessary to use lattice structures. Staff IB, p. 25. Staff errs for two reasons. First, GBX has suggested commitment to monopoles or more unsightly lattice-mast type structures. Galli, Dir., GBX Ex. 2.0, ll. 245-351. Secondly, GBX's promises, and the terms of the AIMA, do not protect landowners from use of four-footed lattice structures. LACI IB, pp. 48-49. Staff's reliance on these promises without substance is misplaced. If anything, GBX's selective use of words in its testimony and in the AIMA should raise concerns as to GBX's true intentions. If it truly meant avoid use four-footed lattice structures, it could have been considerably more specific or explained itself at the hearing.

E. Grain Belt Express's Approach to Land Acquisition (including issues relating to easement document)

In order to satisfy landowner concerns, GBX argues that its easement agreement contains indemnification language. GBX IB, p. 133. However, indemnification is only as good as the purse backing it. Here, it has been more than adequately demonstrated that GBX is in a precarious financial situation and we do not know that any insurance policy would provide funds for such indemnification. That said, GBX failed to demonstrate its indemnification protects landowners.

Moreover, GBX asserts, without competent authority, that its activities cannot lead to a mechanic's lien on landowner's property. *Id.*, p. 134. It cites to the testimony of Mr. Lawlor to support its assertion. But Mr. Lawlor is not licensed to practice law in Illinois. Lawlor Tr. 144:5-14. Frankly, he should not be providing legal opinions on Illinois' property law.

Thus, it is unsurprising that Mr. Lawlor fails to reference any legal support for his position on mechanics liens. Curiously, GBX fails to cite to any Illinois authority to provide

any authority backing Mr. Lawlor's assertion, despite retaining Illinois counsel for these proceedings. The first place to check, of course, would be the Illinois Mechanics Lien Act. Contrary to GBX's position, the Act provides that contractors have a lien upon the whole tract or lot of land. 770 ILCS 60/1(a). Here, the lot would be the entire parcel. GBX is not dividing property and taking a fee interest, it seeks an easement on a portion of a tract or lot. The Illinois Mechanics Lien Act does not reference such limitations; it provides that the liens apply whole lots or tracts. For example, if someone builds a shed in her backyard and does not pay for it, a lien would be placed on the whole parcel, not just the shed. Thus, the activities of this thinly capitalized neophyte venture put landowners entire properties.

Unsurprisingly, it seems that GBX has met landowners that are reluctant to simply accept GBX's word on this topic. For those landowners, GBX believes that the inclusion of express language prohibiting liens on the landowner's property and requiring it to cure attempted liens is sufficient. Lawlor, Reb., GBX Ex. 7.22, ll. 360-364. However, this kind of promise is only as good as the purse that backs it. GBX is a thinly capitalized single-purpose entity. If GBX wanted to make a promise with actual meaning, it would have offered security to back its promise. Of course, it did not.

In sum, GBX is attempting to fake it until it makes it. That is, unlike a true utility, *i.e.* ATXI or ComEd, GBX makes promises that it may not be able to fulfill. ComEd and ATXI have the means to actually meet their obligations. GBX can only back its promises with hopes and aspirations. Those hopes and aspirations do not mollify the concerns of any knowledgeable landowner. They should not convince this Commission either.

F. Interactions with Pipelines and Railroads

1. *Rockies Express Pipeline*

2. *Illinois Central Railroad and BNSF Railroad*

VI. Request for Authority under Sections 8-503

VII. Grain Belt Express' Accounting-Related Requests

A. Use of the FERC Uniform System of Accounts

B. Request to Maintain Books and Records Outside of Illinois

C. Request for Proprietary Treatment of Certain Information

VIII. Other

A. GBX Is Improperly Seeking an Advisory Opinion from this Commission

The Farm Bureau pointed out that GBX's petition is now moot and that this Commission cannot provide advisory opinions. Farm Bureau IB, pp. 48-52. LACI agrees, having raised similar points. LACI IB, pp. 56-59. In addition to the arguments made by the Farm Bureau, it is notable that GBX chose not to appeal the Missouri Public Service Commission's denial of its Petition for Rehearing.

Missouri law dictates that an appeal be filed within 30 days of such a denial. Mo. Ann. Stat. §386.510. Here, that date was September 11, 2015. A review of the Missouri docket does not indicate the filing of any appeal. *In re Grain Belt Express Clean Line*, EA-2014-0207 (Mo. Pub. Svc. Comm'n) (last reviewed Sept. 17, 2015). Accordingly, GBX's Missouri application is not just dead; it is now buried.

Even if GBX chose to refile in Missouri, some indefinite, unknown, time in the future, it will fall short. Companies in Missouri must receive consent from local authorities in order to obtain that state's equivalent of a CPCN. Mo. Ann. Stat. § 393.170(2). The Missouri record indicates that five counties have been rescinded their consents. Lowenstein Reb., Ex. 306, *In re Grain Belt Express Clean Line*, EA-2014-0207 (Mo. Pub. Svc. Comm'n); Dietrich Reb. Ex. 200, p. 4, *Id.* Thus, GBX cannot resurrect its Project at the Missouri Public Service Commission.

In all, the GBX Project is dead in the water. The Missouri Public Service Commission's denial can no longer be appealed. GBX has neither plans for how it intends to resurrect the Missouri portion of the Project nor any anticipated timeline for doing so. GBX is asking the Commission for an improper advisory opinion. Applying the law laid out by the Farm Bureau and LACI in their Initial Briefs, this Commission lacks the authority to provide such an opinion. If it does so it will act outside of its jurisdiction. This Commission should deny GBX's Application.

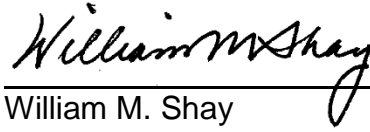
IX. Conclusion

For all the reasons set forth in its Initial Brief, this Reply Brief, the Motions to Dismiss and related filings, and in the Motion and Complaint filed with the Illinois Supreme Court, LACI respectfully requests that the Commission either dismiss GBX's Application or deny GBX's request for a certificate of public convenience and necessity.

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Respectfully submitted,

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